

JUL - 8 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
 Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF SECRETARY

In re Applications of)	MM DOCKET NO. 94-10
)	
THE LUTHERAN CHURCH/)	File Nos. BR-890929VC
MISSOURI SYNOD)	BRH-890929VB
)	
For Renewal of Licenses of)	
Stations KFUD/KFUD-FM)	
Clayton, Missouri)	

To: Administrative Law Judge
 Arthur I. Steinberg

MASS MEDIA BUREAU'S COMMENTS
ON MOTION TO ENLARGE AND FOR INJUNCTIVE RELIEF

1. On June 20, 1994, The Missouri State Conference of Branches of the NAACP, the St. Louis Branch of the NAACP, and the St. Louis County Branch of the NAACP (collectively "the NAACP") filed a motion to enlarge the issues and for injunctive relief in the above-captioned proceeding. The NAACP seeks the addition of the following issues against The Lutheran Church/Missouri Synod ("the Church"):

To determine whether The Lutheran Church/Missouri Synod abused the Commission's processes by using a person under its control to obtain, by trickery and under false pretenses, the attorney work product of the NAACP's attorney, which work product constitutes virtually the NAACP's entire trial strategy; and

To determine whether The Lutheran Church/Missouri Synod abused the Commission's processes by interfering with an NAACP witness and improperly attempting to induce such witness not to provide testimony in this proceeding.

046

The Mass Media Bureau submits the following comments¹.

Abuse of Process Issue - "Theft" of Attorney Work Product

2. As the NAACP concedes, its request for an issue to inquire into an alleged theft of the NAACP's attorney work product is untimely. Thus, in order to justify addition of the requested issue, the NAACP was required to show that the issue is of probable decisional significance. An issue is of probable decisional significance if "the likelihood of proving the allegation is so substantial as to outweigh the public interest benefits of proceeding to an orderly conclusion in [the] proceeding." CHM Broadcasting Limited Partnership v. FCC, No. 92-1263, slip op. at 17-18 (D.C. Cir. June 14, 1994), Section 1.229(c) of the Commission's Rules. We submit that there is little likelihood of proving the NAACP's allegation. Indeed, even if the Motion were timely, there would be no basis for further inquiry.

3. Contrary to the NAACP's serious charges, there has been no theft here, even if the NAACP's allegations were viewed in the light most favorable to the NAACP. The alleged theft is said to have occurred when Michael Blanton, a law student assisting the NAACP, interviewed Tom Lauher in preparation for the hearing in the above-captioned proceeding. Blanton did not object when Lauher indicated that he was tape recording the interview.

¹ The NAACP's motion for injunctive relief was ruled upon at the hearing. Tr. 80-83, 87-89, 98-100. Thus, the Bureau's comments are limited to the request for the addition of issues.

Following the interview, the NAACP decided not to call Lauher as its witness. Subsequently, the Church exchanged written testimony by Lauher. The testimony was dated two days before the NAACP's meeting with Lauher. On the basis of these facts, the NAACP concludes that Lauher was acting as the Church's agent when he met with Blanton, fraudulently posing as a potential witness for the NAACP, and that he taped the conversation at the Church's direction. The NAACP claims that its questions for Lauher revealed its trial strategy. Thus, according to the NAACP, the incident constituted a theft of the NAACP's attorney work product. The NAACP goes so far as to suggest that attorneys for the law firm of Fisher, Wayland, Cooper, Leader and Zaragoza may have been implicated in this alleged "conspiracy to obstruct justice." Motion at p. 6.

4. The Bureau submits that the NAACP has failed to show that the Church or its attorneys engaged in any misconduct. First, the NAACP's allegation that Lauher was acting as the Church's agent is pure speculation. While Lauher prepared a transcript of the tape recording and later provided it to attorneys for the Church, there is no indication that the tape was made at the Church's direction². On the contrary, Lauher testified that making the tape was his idea. Tr. 128. Moreover, contrary to the NAACP's charges, testimony on this point taken at

² After the filing of the NAACP's instant Motion, the Church provided a copy of the transcript to the Bureau at the Bureau's request. The transcript, which was prepared by Lauher, is attached hereto. Bureau counsel have not listened to the tape and make no representation as to the accuracy of the transcript.

the hearing makes clear that no other witness listened to the tape recording or read the transcript. Most importantly, the NAACP consented to the making of the tape by Lauher, and never suggested any restrictions on its subsequent use.

5. At the time of the interview, there was no indication that Lauher was the NAACP's witness. Indeed, the attached transcript of the tape includes, at p. 10, the following comments by the NAACP's Blanton:

I'm not sure what's going to happen. I'm just going to report back to David Hoenig (sic), who is the attorney I'm working with on this, you know, about our talk today. And I'm not sure if you will be called as a witness or not. There's three parties involved, there's us, there's the radio station, and there's the MMB board, the administrative (sic) agency, who also investigate the case

Sometimes they call witnesses, too. Then either party involved calls them. So, David Hoenig (sic), our attorney, was saying you may be called by them to testify in this case, just to let you know.

Clearly, the NAACP did not consider Lauher its witness and Lauher did not pose as such. Furthermore, the NAACP recognized that Lauher could be called by any party as its witness.

6. It was apparent from the time the Church provided documents, in response to the Bureau's production request, that Tom Lauher would be a key witness in this proceeding.³ Before

³ As noted by the NAACP, Bureau counsel inquired of counsel for the NAACP whether he had a telephone number for Mr. Lauher. The Bureau also inquired of the Church if it had Mr. Lauher's phone number. Mr. Lauher's phone number was provided to Bureau counsel by counsel for the Church and, on June 7, 1994, Bureau counsel contacted Mr. Lauher and interviewed him concerning the issues in this proceeding. Bureau counsel had a number of discussions with counsel for the NAACP about locating potential witnesses and was informed that the NAACP had people in St. Louis

Lauher was interviewed by either the Bureau or the NAACP, the Bureau deposed a number of principals of the Church. At that time, both Bureau counsel and counsel for the NAACP questioned several deponents at length about memoranda authored by Lauher while he was employed by the Church. Moreover, counsel for the NAACP discussed a number of his theories with counsel for the Bureau and the Church when responding to objections. There is nothing in the attached transcript to suggest the disclosure of any trial strategy not already well known by all parties. For this reason, there is no loss of spontaneity in Lauher's testimony that would not have occurred in any event as a result of questions asked at deposition and the Bureau's own interview with Lauher.

7. Even if the NAACP's questions to Lauher suggested a previously secret trial strategy, that strategy ceased being protected when it was disclosed to an interviewee who was not a principal of the NAACP. To the extent that the NAACP's questions revealed strategy, the NAACP asked them of a third party at its own risk. See, generally, Data General Corporation v. Grumman Systems Support Corporation, 139 F.R.D. 556 (D. Mass. 1991).

8. At page 10 of its Motion, the NAACP contends that "Mr. Lauher's behavior, in which he concealed from the NAACP his status as an agent of KFUD, is exactly analogous to that

who were looking for witnesses. While Bureau counsel recall discussing potential witnesses with counsel for the NAACP, Bureau counsel do not recall asking NAACP counsel to determine for the Bureau whether Lauher had relevant evidence. As stated, it was obvious that Lauher would have such evidence.

described in David Ortiz Radio Corp. v. FCC, 941 F.2d 1253, 1261 (D.C. Cir. 1991)." In Ortiz, the NAACP notes, the court found that a hearing had to be held to explore charges that an applicant had concealed his true identity while conducting an investigation. The Ortiz case, however, is far from "exactly analogous" to the instant case. As indicated, the NAACP provides no evidence in support of its claim that Lauher is an agent of KFUD. Moreover, in Ortiz, it was a principal of an applicant that was accused of claiming to be an FCC inspector during an investigation of a competing applicant's proposed antenna site. The competing applicant claimed that the purpose of the investigation was to impede, frustrate or obstruct the prosecution of its application. Thus, the Ortiz case, which did not involve a non-party witness, is easily distinguished.

9. The NAACP also contends, at footnote 2, that in only one other Commission case has the type of misconduct engaged in by the Church occurred. In that case, Lewel Broadcasting, Inc., 44 RR 2d 39, 42 (ALJ 1978), it was alleged that a former employee of a station stole station documents and made copies available to a competing applicant. In Lewel, however, no issues were added because of the hearsay nature of the allegations. Moreover, the Lewel case is distinguishable from the instant case in that it involved the stealing of documents from a radio station. The only allegation here is that a witness interviewed by the NAACP may have provided another party with a tape recording of that interview.

10. In short, the conduct described by the NAACP has no bearing on the Church's qualifications. An issue should not be added.

Abuse of Process Issue - Witness Interference

11. The NAACP asks for an abuse of process issue against the Church because of two telephone conversations between the Church's Dennis Stortz and Otis Woodard, who was a witness for the NAACP. According to Woodard's declaration, appended to the Motion, on the morning of June 15, 1994, Stortz telephoned Woodard "to tell [him] that KFUD wanted to be friends with [him]." Apparently Stortz offered to let Woodard make public service announcements on KFUD and inferred the possibility of work or a job in the future. That afternoon, Woodard made a declaration for the NAACP in which he stated that KFUD had never approached him as a referral source.

12. Woodard states that, on the afternoon of June 17, 1994, Stortz telephoned him again and "told [him] that whoever had told [him] that KFUD had mentioned him as a KFUD job referral source for African-Americans was misinformed" and "that it was [Woodard's] former wife, Katherine, who was their minority referral source." Motion at Annex 6. The NAACP had exchanged with counsel for the Church Woodard's declaration as part of its rebuttal case that same afternoon.

13. The NAACP speculates that Stortz's first telephone call to Woodard was an inducement to persuade Woodard not to come

forward as a witness. Yet, it is not clear whether, at that time, Stortz either knew or could have expected that Woodard would be the NAACP's witness. Stortz apparently knew that the station's contact regarding referrals had not been with Woodard as implied in a pleading filed by the Church on February 23, 1990.

14. With respect to the second telephone call, Woodard does not describe how (or even if) Stortz attempted to influence him. There is nothing in Woodard's declaration to suggest the implication advanced by the NAACP: that Woodard would be embarrassed with questions about his former wife. Woodard himself does not state that he inferred such a thing from Stortz's statement. Nevertheless, the purpose of the telephone call is not apparent, especially absent knowledge about the relationship between Woodard and the Church, if any. Stortz may have been attempting to dissuade Woodard from testifying on behalf of the NAACP by informing him that the Church was going to claim that its referral source was Woodard's wife⁴.

15. A party has the right to contact potential witnesses and to otherwise carry out an investigation in connection with a case. As long as the conduct is reasonable, prudent and related to the objectives of the proceeding in its purpose and scope, it is not an abuse of process. Chronicle Broadcasting Co., 40 FCC

⁴ The former Mrs. Woodard was apparently contacted by Otis Woodard and she provided a declaration to the NAACP which was received into evidence. In her declaration, Mrs. Woodard confirms that she may have received requests for employment referrals from the Church. NAACP Ex. 15.

2d 775, 799-800 (1973). If, however, the facts suggest an attempt to influence a witness' testimony, further inquiry may be necessary. Here, there exists a close question which is likely to be illuminated by the Church's explanation. In the absence of a reasonable explanation by the Church, the Bureau would not oppose addition of an abuse of process issue to inquire into the alleged attempt to influence Woodard's testimony.

Respectfully submitted,
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July 8, 1994

Attachment

Q & A With Representative from Law Firm representing NAACP

Q: What I wanted to ask you first is...umm...did you work for the station for two years? Is that correct? Or longer than that?

A: No. I worked from...a little over a year. I would say it was approximately mid May of '88 to mid to late July '89.

Q: OK. Do you think that your doing these forms had anything to do with your being let go?

A: No.

Q: OK. I'm just wondering since they possibly were in compliance for some things and maybe another person trying to put them into compliance might have...

A: No.

Q: OK. Not that you remember or you know that wasn't the reason. OK. Well, let's see. OK, on page five at the top you've got there are certain procedures forms, job descriptions that were introduced that inadvertently put the station in a non-compliance situation. Do you recall what those were?

A: Well, I think as I read over the...this memo, it was...

Q: Yeah, I think it is.

A: ...It stated either before or after that in terms of the one phrase it had been inadvertently left off a revised employment application form which was just nothing more than one of those things that occasionally happen. Something was dropped.

What I was referring to there, in general, is based on the premise of the memo which is it's our plan. In terms of our plan, since it was at that time a plan for both the AM and the FM stations. As a result, there were some legitimate requirements for portions of the AM station staffing that would require some religious...specific religious knowledge, but had nothing to do with the FM which was the only thing I was responsible for. By eliminating that phrase, we may be violating...what, indeed we were doing, which was we were not discriminating on the basis of race or religion or anything else...

Q: OK.

A: ...in terms of the FM.

Q: Talking about that clause...

A: Right. In terms of the FM.

Q: OK. Because you did have that...the phrase was eliminated, you're saying, for the AM station, but it was also being used for the FM station applications also?

A: It was just an inadvertent..

Q: OK.

A: There wasn't any intent behind it. We were, in my opinion anyway, following the proper guidelines and so stated in the EEO policy. That (phrase) had been left off of there.

Q: OK. Then you say on the next page you should do separate hiring...applications...what we were just talking about.

A: I wasn't saying separate hiring, as such. In that I had talked with the counsel for the station at the time who is referred to here...

Q: Kranberg.

A: Marcia Kranberg, regarding the nature of the two radio stations. One a religious station. One a non-religious station. I was the general manager for the FM station only. The two stations were operating under one Equal Employment Opportunity policy. My question was "Is that the best way or should they have each their own..."

Q: Right.

A: ...which given the nature of the distinctly different approaches to the AM and the FM station, this was a legitimate question. Let's clarify this and see.

Q: OK.

A: And although, as I recall, I think Marcia had recommended that that might be a clearer way to go, at least in my tenure, as I recall anyway, the stations continued under the one EEO policy.

Q: Yeah, that's what she's talking about a thing called bona-fide occupation qualification like Chinese waiters can be hired for a Chinese restaurant...Italians for Italian...

A: There were certainly some of those for the AM station.

Q: Right. Yeah.

A: The question was, what impact, if any, might that appear to have on the FM. She certainly wasn't strong, saying yes that must be done.

Q: Just had a suggestion, not a requirement.

A: Right.

Q: OK. Down here on page seven, "I've discovered we are operating in violation of our own policies currently on file. I have reason to believe this applies to the AM operation as well as the FM operation." Next page. "I've taken steps in good faith to insure full compliance in FM. I shared with Jerry Householder those steps taken on FM." What steps were taken on FM? Do you remember?

A: Well, as I recall there were two things that I had discovered. One is the gentleman's name for both stations who was responsible for the EEO implementation who was no longer involved with the operation.

Q: Was this Abatie?

A: Yes. And secondly, again...I certainly remember that we needed to reinstate our phrase on the...on...

Q: The equal opportunity.

A: ...on the employment application itself. Third, there was some contradiction on the application form, since it was used for both stations and, therefore, legitimate in certain positions to ask about religion...getting back to the discussion with Marcia...for those positions that were clearly FM positions I felt it was necessary to not have those for the FM applications. Jerry Householder, I forget...

Q: May I ask you a question?
A: Yeah.
Q: OK. Were these...the religious things we were just talking about...were they questions or requirements that were on the...
A: I don't really recall. Again, it wasn't really within my scope of responsibility because my responsibility was strictly with the FM. The only reason I even touched on the AM here is that there were things that were combined, so I had to touch on them.
Q: Right. You wanted them separated?
A: I had to touch on them, but I had no responsibility whatsoever for the AM.
Q: OK. I just wondered if you recalled.
A: No. And Jerry Householder...I don't remember his title. He was involved strictly in the AM station operation, which is why...he at the time...I guess was the one who was...there was no general manager of the AM station. I'm just trying to recall. I guess he was the person that had some authority at the time. But I don't remember.
Q: OK. This page nine, other areas. Job descriptions should be job specific, held to a minimum and be completely objective...next page...accordingly, the job descriptions for KFUD-FM have been reviewed and changed where necessary. What was the problem beforehand? Do you recall?
A: Well, based on what I've said here, and in attempting to recall, obviously I thought some things were not as specifically and completely objective as they might have been at the time. Specifics...I recall thinking more in terms that the language within the job descriptions could be sharpened. I'm having a hard time citing anything real specific...
Q: OK.
A: At this point if I had some copies of this...
Q: I was just thinking it's too bad that they didn't send me pre and post...
A: Yeah.
Q: ...job descriptions.
A: I hate to speculate, because I don't want to imply the speculation was on either the one that existed or the way it was revised. To give an example of something I think would be subjective...I suspect if you had down a good typist, as opposed to a typist who can do 65 words a minute correctly...
Q: Right.
A: One would be subjective, two would be specific.
Q: Right.
A: It was that sort of thing that...
Q: An objective, like you were saying, as opposed to what's good, you know.
A: Right.
Q: Somebody brings me coffee, you know. Every time I ask for something, you know, there's so many typos in the paper.

Alright. Now, on the second sheet. The memo that you sent to Paul Devantier. Do you want to take a look at that for a minute, also?

A: Sure.

Q: Do you recall...I'm sorry to interrupt you...if you were still working for the station when the...was your license up for renewal when you were still employed, or were you gone by the time that occurred?

A: Well, the seminar I referred to somewhere...in this one...

Q: Right. In this document.

A: ...was held in very late '88 in preparation for the renewal process. I don't recall when the actual renewal date was. If it was after July, '89, then I wasn't there.

Q: OK. I think it was actually in the Fall of '89. I was just trying to find out the parameters.

A: Then I was not there at that time.

Q: OK. Alright. If July, and it was post-July...what was your last day there? Do you remember?

A: No. Sometime in the middle of July, '89.

Q: OK. Alright. That's fine.

A: Certainly it must be on somebody's record somewhere.

Q: OK.

A: I don't recall.

Q: OK. Just to save you time, I forgot to tell you on this the parts I'm interest in are the general part, the FCC purposes parts...

A. Anything that doesn't have a check?

Q: And...well no there are some we're not interested in. And then finally the hiring. They're the major ones. OK. On the very first page, the one that's not checked, establishing an EEO officer. Did your company have an EEO officer at the station?

A: Well, the reason that wasn't checked...if you go back to the cover sheet. I guess there were some 130 things on this suggested...

Q: Not applicable?

A: Well, the 41 remaining ones were still being reviewed at the time this memo was prepared. So that doesn't mean anything one way or the other. We just hadn't gotten to them yet. But, I would think the reason that particular one had not been checked off is that we were still in the process of determining if we should remain...when I say we in this case it really wasn't my decision as the FM general manager...but if the Lutheran Church Missouri Synod would continue with one EEO policy for both stations or have two separate ones. In either case, the gentleman who was named in the combined EEO policy which was in effect was no longer there. At the least we needed to do... I think I recommended somewhere...we needed to have someone who was there designated.

Q: I'm sorry. His name was Abatie? Is that right?

A: Abatie.

Q: Was he the person that occupied this position earlier or

was he...

A: Yes. He had been the one who occupied that position earlier.

Q: OK.

A: So that was just who will occupy it at this point. Waiting for a final decision.

Q: OK. What were your personnel files like at the...

A: Well, personnel files were maintained in a central location by the Lutheran Church Missouri Synod. So the reason that wasn't checked is that they were not really part of what I would have been...they would not have been easily accessible to me. That doesn't mean they were being hidden or anything...

Q: Right. It would just take time to get them.

A: Right. So someone else would have to be doing any reviewing at that point to make sure everything was OK.

Q: OK. I'm sorry, what was the name of the city you said where they were located?

A: I'm sorry, who?

Q: The central location where the files were kept. You said the personnel files were kept in a central location at Lutheran Synod headquarters.

A: The Lutheran Church Missouri Synod is located on South Kirkwood Road. I believe that's within Kirkwood.

Q: OK.

A: And the Synod retained control over personnel. Now whether the personnel files were somewhere at the radio station facilities...for the broadcasters on AM or FM...or at the Synod building location, I'm not sure.

Q: OK.

A: I don't recall. But, again, in the situation where there was some concern about the AM, under which I had no authority or responsibility, then the personnel records for that portion of the operation would not be within my scope anyway.

Q: OK. Further down...the next one. Include a copy of your EEO program in personnel manuals and employee handbooks. Was that policy not done before you came there and implemented after you were there?

A: I don't remember. By not having a check here...again...that didn't imply that it had not been done. It just simply meant that as of this date we haven't gone through the entire check list process. This was a "Here's where we are now" memo to demonstrate where we were in following through... just a review.

Q: OK. So what about the next one?

A: Well, I think it had been successfully communicated. We certainly, in the time I was there, had hired more women and hired minority. Again...

Q: But...

A: ...under the basis of an AM and FM one EEO plan, I could only speak for the FM.

Q: Right. OK. But, just under the FM, for awhile the work applications were missing this statement, right?

A: The work applications, as I recall, for awhile were missing

that statement.

Q: And you changed them while you were in charge.

A: Yes.

Q: OK.

A: That was just one of those oversights, nothing more than that.

Q: But, that was done before...the oversight occurred before you got there and after you were there you corrected it.

A: Yeah.

Q: OK.

A: As I recall, there had been some revisions in the employment applications and sometimes that happens.

Q: OK. Do you know if the station kept a list of recruitment sources used in seeking qualified female and minority applicants?

A: I'm...as I can recall...there was one kept.

Q: OK. Do you recall if you analyzed the type of...

A: We reviewed it on occasion. Again, I thought we were doing pretty well, as best as I could tell. We were getting a variety of applicants.

Q: OK. We're in records of all referrals. Were they, do you recall?

A: That I don't really recall, because when it comes right down to it, the final hiring decisions were not within the general managers scope of responsibilities within the FM station. So, there could have been.

Q: Whose responsibilities were those?

A: The ultimate responsibility for hiring?

Q: Uh-uh.

A: Paul Devantier.

Q: He wouldn't send you a written record that I've decided to hire this person or I haven't decided to hire this person because of such and such a reason?

A: I don't recall that part of the process. Ultimately, anyone that he would have made the final decision on would have come through a...the total effort. All I'm suggesting is that since the final approval and final decision came from him, there could have been some referrals that went directly to people in his office that I wasn't aware of on the FM side. I don't know of any I wasn't aware of.

Q: Alright. And I guess you would answer affirmatively to the next one, since you were changing things around there...conduct a continuing review of...

A: I think we did that and did that well on the FM.

Q: OK. I'm going to write that down...write that down that you're basically talking about the FM...so I talked about.

A: Well, yeah, I think that would be an important distinction. To neither mislead me, you or whoever it is you're referring to. I cannot speak on the AM side.

Q: OK. And how about...did you...was Paul Abatie there when you got there or was he already gone?

A: He was gone.

Q: So the next two questions you wouldn't know.

A: Well, correct. Again, there was no one specifically in the position of general manager for the AM station. And the slot for director of broadcast ministries, a position I reported to within the structure of things, and the AM general manager reported to, was also vacant at this particular time. So, although both stations were going to face renewal at the same time together, my responsibility was clear in terms of the FM. I certainly felt reluctant to step in to areas where...a...it was not within the scope of things and...b...it was an area where I wasn't familiar with anyway.

Q: OK. How many managers did you guys have at this station?

A: At a time, or over a period of...

Q: On a regular basis.

A: Well, there would be...the structure was...there was a general manager for KFUD-FM...

Q: Uh-Uh.

A: ...and during the time we've been talking about...roughly May of '88 to July of '89...middle of each of those two months roughly...I was the FM general manager. There was a position for an AM general manager as well that was vacant at the time I was there at the FM station. And each of those two positions reported to the position of director of broadcast ministries. And that position was vacant at the time of these...you know...memos that we are looking at.

Q: Can I...I'm sorry...who was the person you reported to?

A: So I was reporting to Paul Devantier. I forget what Reverend Devantier's title was at the time. But he would have, in essence, been the person the director of broadcast ministries would report to.

Q: OK. And do you know if he was aware of the EEO obligations that he had to follow?

A: I would certainly think he was.

Q: OK.

A: He certainly gave me every indication that he wanted to make sure the FM station was in full compliance with our own policy.

Q: OK. Did you document all of your EEO efforts that you made?

A: As I recall, all of our efforts in the hiring process had been documented in terms of ads placed, applicants received. That kind of documentation was really maintained in a central file for both stations. That's my recollection, anyway.

Q: OK. Also, taking these two documents as an example, if we would consider these EEO efforts...to compile EEO efforts, were there any other things that you did that weren't documented as far as implementation or changes in policy or anything like that?

A: No, I don't think so. I thought at the time that our efforts were good. Some of the administrative detail perhaps...for one reason or another as we already talked about...needed to be improved.

Q: OK. Well, I just wanted to make sure. I figured since you had these documents, you had documented. I wanted to make sure. Get that cleared up. What does this mean right here?

A: I have no idea. That might have been why I left it blank. This came from a handbook.

Q: Did it possibly mean what you're looking for in an employee do you think? Or you're not sure? I'm just trying to jog your memory.

A: I appreciate that. I really don't know. I guess that's a drawback to picking up pre-printed materials.

Q: OK. Go to page...start out 125 but go to the next page 126. OK. Did your station post notices for vacancies in the station? At the station?

A: Well, my recollection as to why that wasn't checked. The Lutheran Church Missouri Synod administered the total vacancy information, as I recall. I was not a Lutheran, so I didn't come in with knowing these procedures. But, as I recall, I think the Synod did that for all areas, including the stations. I'm pretty certain that it was done.

Q: Perhaps not at the station but in one general location where they had...

A: Central employment...

Q: ...for all different employees that worked for the...

A: And people would, in terms of current employees...people who were employed by the Synod, which would include station employees, I mean there were other people in broadcast oriented positions throughout the Synod. Any effort to post a vacancy for current employees...it would be in everybody's best interest to make sure it was...

Q: That everybody knew about it.

A: Yeah.

Q: OK. The next one. Do you know before you got there and while you were there they were contacting minority organizations and potential sources for minority applicants to referrals?

A: I'm pretty certain when I was there that was being done. Before that, I can't say with certainty one way or the other. I would expect that they were.

Q: So you expect they were in compliance, but you don't know, before you were there. And when you were there you said that you did contact minority organizations for referrals?

A: I'm trying to think of the gentleman's name right now. It absolutely escapes me. I can picture him. To give you a concrete example. Well, if it comes to me, it comes to me. I can picture this fellow as if I saw him yesterday. I think it's also relevant here, as a reminder in terms of this...with the memo that preceded this one. In reference to the AM because of the combined policy. In this particular memo that were now looking at, the one on March 15th, we have to keep in mind the stations...the

AM and the FM were operating under a joint EEO program...

Q: Right. But they would have an obligation. I'm not certain that you're aware of that.

A: I'm not saying that at all. In fact, as a licensed broadcaster, I would assume they would be. However, in the cover memo, I am referring to the FM station has definitely done these and checking the others. I'm making no judgment one way or the other what the AM station...

Q: Right.

A: ...has or has not done. And in some of these cases it may have been left unchecked because...let's see before checking it off completely and looking at the total picture...double checking on the AM side.

Q: OK.

A: And some of that I just...five years later...I'm not sure that I would remember.

Q: Sure. And did Devantier interview the applicants for jobs or were you involved in applicants for jobs while you were there?

A: In terms of the FM station, for those employees that were FM only employees, while I was general manager for the FM I certainly was involved in interviewing applicants.

Q: OK. Anybody that was qualified, that was looking for a position that was available, you interviewed them?

A: Qualified applicants.

Q: A person...there was a job opening. The person was qualified. You interviewed them.

A: I would have an interview, yes.

Q: OK. They said I have to ask these questions in a certain way. OK. When you hired somebody on the FM side, did you keep a record why they were hired or why they weren't hired?

A: I believe those records were maintained. I did not specifically maintain those records. I believe they were maintained. I think there is something important to understand. At the time I was there, the station had just, in essence, decided to be...to fully utilize the commercial aspect of their license...

Q: As opposed to non-commercial.

A: ...and we were...there was, even under those circumstances, employment for the most part was pretty stable, especially in relationship to radio station employment. In relation to any employment. It's pretty stable, number one. Number two, starting from scratch, we weren't the most appealing operation for someone to select. Low pay and not a whole lot of guarantees. We're not talking vast numbers of applicants here.

Q: Right. When a person was not given a job, did you inform them in writing that they...

A: When a person was...

Q: Not hired for a position. Let's say a disc jockey job. You hired one person. Were the other people informed in writing that they hadn't been...

A: I don't know.

Q: OK. So, it might have been a phone call. But you can't recall?

A: I just don't recall.

Q: OK. Well, I don't think I have anymore questions for you. You can keep both of these if you would like.

A: Thank you.

Q: I'm not sure what's going to happen. I'm just going to report back to David Hoenig, who is the attorney I'm working with on this, you know, about our talk today. And I'm not sure if you will be called as a witness or not. There's three parties involved, there's us, there's the radio station, and there's the MMB board, the administrative agency, who also investigate the case...

A: For the FCC?

Q: Yeah. Sometimes they call witnesses, too. Then either party involved calls them. So, David Hoenig, our attorney, was saying you may be called by them to testify in this case, just to let you know.

From the 20th to the 24th there's hearings going on in DC. They're coming here for the 27th through the 29th, for the St. Louis portion.

CERTIFICATE OF SERVICE

Michelle C. Mebane, a secretary in the Hearing Branch Mass Media Bureau, certifies that she has, on this 8th day of July, 1994, sent by regular United States mail, U.S. Government frank, copies of the foregoing **"Mass Media Bureau's Comments on Motion to Enlarge and for Injunctive Relief"** to:

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